

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -X

UNIVERSAL CITY STUDIOS, INC., :

Plaintiff, :

-against-

82 Civ 4251

(RWS)

NINTENDO CO., LTD. and NINTENDO of :
AMERICA, INC.,

Defendants :

- - - - -X

Deposition of Plaintiff Universal City
Studios, Inc., by STEVE ADLER, taken by the
Defendants, pursuant to Notice dated November
10, 1982, on Wednesday, November 17, 1982 at
the offices of Mudge Rose Guthrie & Alexander,
Esqs., 20 Broad Street, New York, New York 10005,
at 10:20 o'clock in the forenoon, before Donna
Tursi, Registered Professional Reporter and
Notary Public within and for the State of New
York.



WALTER SHAPIRO, C.S.R.
CHARLES SHAPIRO, C.S.R.

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2 S T E V E A D L E R, having been first duly
3 sworn by the Notary Public, was examined and
4 testified as follows:

5 EXAMINATION BY MR. GALLATIN:

6 Q Would you state your name on the record,
7 please?

8 A Steve Adler.

9 Q Mr. Adler, if in the course of this deposition
10 any of the questions I ask you are not absolutely clear
11 to you, if you'll just let me know I'll endeavor to
12 clear up any problem. Otherwise I will assume that my
13 questions are clear to you and that you understand them.

14 What is your business address, Mr. Adler?

15 A 100 Universal City Plaza, Universal City,
16 California.

17 Q And by whom are you employed?

18 A MCA, Inc.

19 Q And what is your position with MCA, Inc.?

20 A Vice president in charge of merchandising.
21 And I am a vice president of Universal City Studios.

22 Q And are you--do you hold a position with
23 any other affiliated company in the MCA group?

24 A No, sir.

25 Q You do not hold a position with Merchandising

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2 A I was in school.

3 Q Where were you in school?

4 A Fairleigh Dickinson University, Teaneck, New
5 Jersey.

6 Q Did you have a major course of study?

7 A Journalism, history and English.

8 Q Do you have any graduate education?

9 A No.

10 Q Now as vice president of Merchandising Corpo-
11 ration of America can you tell me what your duties are?

12 A I negotiate licenses, I am in charge of
13 following the licensees after we negotiate the licenses
14 from the inception of a particular product line, from
15 artwork to prototype to sample products to ultimate sale
16 and distribution of the product, in a monitoring capacity.

17 Q Do you have any other duties?

18 A I am in constant contact with the various
19 licensees regarding their preparation of advertising and
20 promotion.

21 Q Are you responsible for marketing various
22 properties of Universal City's?

23 A Merchandising.

24 Q You're responsible for merchandising these
25 properties?

merchandising
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A Yes.

Q And what do you mean by "merchandising these properties"?

A Negotiate licenses, help sell the licenses through the respective licensees based on movies or television shows or other properties belonging to the studio.

Q Are you responsible for contacting prospective licensees?

A Yes.

Q Mr. Adler, what did you do to prepare for this deposition?

A I met with my attorney.

Q Did you review any documents?

A I believe I looked at some of the documents with the attorney, yes a declaration, that's basically it.

Q What declaration?

A I saw some declaration I thought I had received some questions questions on.

Q Questions from whom?

A The attorney.

Q Can you describe this declaration any better?

A No, I've described it the best way I can.

Q Was it a declaration in a trademark

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2 application by Universal Studios?

3 A I believe so.

4 Q Have you seen the complaint in this action?

5 A I had seen it, yes.

6 Q When did you see it

7 A I might have looked at it today, I might have
8 looked at it a few weeks ago, I don't recall, I've seen
9 so many papers this morning.

10 Q Were you consulted, Mr. Adler, in the prepara-
11 tion of plaintiff's responses to defendants interrogatories
12 in this action?

13 A I'd have to see some specifics. I think by the
14 question I can't answer that.

15 MR. GALLATIN: I'm handing Mr. Adler a copy
16 of Plaintiff's response, first set of interrogator-
17 ies and first request for production of defendant
18 Nintendo of America, Inc.

19 A Yes, I believe I saw this at one time.

20 Q Were you consulted in preparing the responses
21 in that document?

22 A I believe so.

23 Q By whom were you consulted?

24 A Mr. DeMuro, Joe DeMuro.

25 Q Who is Mr. DeMuro?

of America as Merchandising, I mean Merchandising Corporation of America.

A All right.

Q Can you tell me the corporate relationship, if any, between Universal and Merchandising?

A It is a wholly-owned subsidiary of MCA, Inc.

Q And can you describe generally the business of Merchandising?

A Well, Merchandising Corporation of America is the licensing arm of Universal City Studios.

Q And how long has Merchandising existed, if you know?

A I've been involved in it since May of 1972.

Q Am I correct that Merchandising and its employees have the exclusive responsibility within MCA, Inc. to market and license the trademarks and copyrights of Universal?

MR. FAIRHURST: Could you repeat the question?

(The record was read.)

MR. FAIRHURST: Compound question. Could you break it down a little?

Q Would I be correct that Merchandising has the exclusive responsibility within MCA, Inc. to license and market the trademarks of Universal Studios?

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A As far as I am aware, yes.

Q Do they have that same exclusive responsibility with respect to copyrights?

A As far as I'm aware, yes.

Q Mr. Adler is Merchandising named as the licensor in the licensing agreements you negotiate for Universal trademarks?

A Again, as far as I'm aware, yes.

Q And do you know by what authority Merchandising purports to be the licensor of the property interests of Universal?

A As far as I've been advised by the Law Department.

Q You've been advised that they have the authority?

A Yes, agreement between Merchandising Corporation of America and Universal Studios.

Q Is it a written agreement?

A I would have to check.

Q Have you ever seen the agreement?

A I believe I have.

MR. GALLATIN: If such a written agreement exists we request that you produce it for us.

MR. FAIRHURST: So I make a note of this

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2 time.

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Q Can you tell me with what matters he has ever
4 become involved?

5

A Not that I can recall at this point.

6

Q You don't recall of any matters in which Mr.
7 Sheinberg has been involved in the business dealings
8 with Merchandising, is that right?

9

A At this point, no.

10

Q I may have asked you this, Mr. Adler, but is
11 Merchandising responsible for supervising all licenses of
12 Universal's trademarks and copyrights which are in effect?

13

A I think you did ask me that earlier.

14

Q Would you repeat your answer? I apologize.

15

A As far as I am aware.

16

MR. FAIRHURST: Let me speak with him for a
17 moment.

18

(Discussion off the record.)

19

A I'm not talking about the Record Company.

20

MR. FAIRHURST: Listen to his question.

21

A Are you talking about an overall policy?

22

Q My question is with respect to the trademark
23 copyrights of Universal City Studios.

24

A Not the record company, certainly not; not
25 the publishing company. I think that's kind of a broad

question if you mean to include all aspects of Universal City Studios. I directed my answer to the motion picture area and the television area.

Q And what other areas?

A Well, you're going to have to--you know, I certainly don't negotiate licenses for all areas, I work with toy companies, apparel companies, but not all areas.

Q Can you tell me what's excluded from your supervisory functions now you've identified records--

A That I can think of right now, records, books.

Q Anything else?

A Maybe music publishing, I wouldn't have anything to do with that.

Q Anything else?

A Not that I can recall offhand. I'm sure it will come out as we go along.

Q Other than Mr. Nuanes, do you interact with any other inhouse lawyers within the MCA group?

MR. FAIRHURST: Objection. Form. You're using a phrase that I--if the witness understands it, that's fine, but I don't when you say "interact."

Q Would you answer the question?

MR. FAIRHURST: I don't want him to answer

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Q Anybody else?

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A Oh, I'm sure we have.

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Q Have you ever consulted with Mr. Kroft of

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Rosenfeld Meyer & Susman?

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A Yes, I believe I have.

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Q Can you tell me in respect to what matters?

7

A I believe it was this case.

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Q When did you consult with Mr. Kroft with

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respect to this case?

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A I don't recall, I would think sometime late

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spring, late summer.

12

Q Can you tell me why you talked to Mr. Kroft?

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MR. FAIRHURST: Objection. Attorney/client

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privilege.

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MR. GALLATIN: I'm trying to ascertain whether

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it is attorney/client privilege.

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MR. FAIRHURST: I have given you enough to

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establish that. You're permitted to ask the witness

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whether he consulted with an attorney. You've got

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an affirmative answer and you're permitted to ask

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him the matter about which that's broad enough and

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he's answered that. You are permitted to ask him

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the time when he did that and it would work the

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other way around but now you are getting into the

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2 nature of the underlying question and that's my
3 objection. I have to draw a line someplace. What
4 would you have me do? Would you have me wait until
5 you ask a question where you then say you've waived
6 it, Mr. Fairhurst? No, I'm drawing the line now.

7 BY MR. GALLATIN:

8 Q Did you consult with Mr. Kroft for the
9 purpose of obtaining legal advice?

10 A I believe so.

11 Q And was that legal advice with respect to
12 this case?

13 A Yes, sir.

14 Q Were you instructed by anybody within the
15 MCA group to consult with Mr. Kroft?

16 MR. FAIRHURST: Objection. What's the point
17 of that? We have already established--no, you are
18 not going to answer these questions. We have
19 established that I am instructing him not to
20 answer.

21 MR. GALLATIN: If he consulted with Mr. Kroft
22 simply on his own initiative without having a corpo-
23 rate purpose then it certainly isn't a privileged
24 communication.

25 MR. FAIRHURST: I think it is implicit in the

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2 witness' answer, all of that's there. I'm not
3 faulting you for wanting to lay a foundation but it
4 is implicit. I don't think there is an opinion--

5 MR. GALLATIN: Can I ask him if that's
6 implicit?

7 MR. FAIRHURST: Go ahead.

8 Q Is that implicit?

9 A I believe so.

10 Q Is it or not?

11 MR. FAIRHURST: He just said "I believe so."

12 Q Is your answer yes?

13 A Yes.

14 Q At this time, Mr. Adler, can you tell me
15 whether you work with anybody else within the MCA group
16 with respect to your licensing activities that you
17 haven't identified thus far?

18 A At this point I don't recall.

19 Q So to your knowledge you have identified
20 everyone with whom you work?

21 A I guess I have.

22 Q Now, Mr. Adler, could you tell me in general
23 terms how Merchandising goes about marketing licenses
24 for Universal properties?

25 A It works this way. If we have a motion

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2 referring to the document?

3 A Not offhand.

4 MR. GALLATIN: Off the record a moment.

5 (Discussion off the record.)

6 MR. GALLATIN: Would you mark this as
7 Defendants' 19.

8 Defendants' Exhibit 19 for identification is
9 a document entitled "Merchandising Corporation of
10 America Merchandising License Agreement." The
11 agreement purports to be between Tiger Electronic
12 Toys, Inc. and Merchandising Corporation of
13 America.

14 (Document entitled "Merchandising Corporation
15 of America Merchandising License Agreement" between
16 Tiger Electronic Toys, Inc. and Merchandising
17 Corporation of America marked Defendants' Exhibit
18 19 for identification, this date.)

19 Q I show you Exhibit 19 for identification.

20 Are you familiar with this document, Mr.

21 Adler?

22 A I've seen it.

23 Q Do you see the representation at the top of
24 the document to the effect that the licensor owns or
25 controls the property in question?

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2 A Yes.

3 Q Does Merchandising own any trademark or
4 copyrights itself?

5 A I believe so. That's more of a legal question.
6 I don't know if I'm responding appropriately. I think
7 that's a little out of my depth but my understanding is
8 that we do.

9 Q Do you believe Merchandising owns the King
10 Kong trademark in this agreement?

11 A I believe so.

12 Q What is meant by the term "controls" in the
13 agreement?

14 A It means it belongs to us, in my understanding
15 of it. I'm not an attorney, I'm not responding to a
16 legal question. You're asking what it means to me?

17 Q Well, did you sign this agreement on behalf
18 of Merchandising Corporation of America?

19 A Yes.

20 Q And you are saying you do not understand
21 fully the term--

22 MR. FAIRHURST: That's not fair.

23 Q Do you understand?

24 A I said I'm not an attorney. You're asking
25 me what I understand the case--

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2 MR. FAIRHURST: He can give you his personal
3 views on it.

4 MR. GALLATIN: Insofar as he signed the
5 agreements I'd like those views, yes.

6 Q And do I understand that in your view the
7 term "controls" and "owns" means one and the same thing?

8 A Yes. It says "owns."

9 Q It says "owns or controls" and in your view
10 "owns or controls" means the same thing?

11 A Yes.

12 Q And they mean own?

13 A Yes.

14 Q Thank you, Mr. Adler.

15 Do you believe, Mr. Adler, that both Merchan-
16 dising Corporation of America and Universal Studios, Inc.
17 own the trademark rights in King Kong?

18 A Yes.

19 MR. FAIRHURST: Let me ask the witness.

20 Do you have any idea what you are talking
21 about? You have no idea, do you, who owns it?

22 THE WITNESS: No, not precisely.

23 MR. FAIRHURST: Then answer the question.

24 THE WITNESS: That's my opinion.

25 MR. FAIRHURST: But you don't know.

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2 Q You signed this agreement on behalf of
3 Universal with the representation that Merchandising
4 Corporation of America owns or controls the trademark in
5 question?

6 A Yes.

7 Q Thank you.

8 Mr. Adler, does anybody at Universal or
9 Merchandising set a general marketing strategy for
10 Universal properties?

11 A You're using the word "marketing" I'm in
12 merchandising, that's a different area.

13 Q A merchandising strategy?

14 A Yes, merchandising a particular movie or
15 television property in the areas that I think we have
16 discussed earlier that we license, I would be involved in
17 that.

18 Q Would you set the strategy for merchandising
19 Universal's properties?

20 A Generally with Mr. Newman, yes.

21 Q And would you and Mr. Newman determine which
22 properties to emphasize in your licensing efforts?

23 A Yes, when it happens that way often we'll get
24 a call from somebody who wants to license a product,
25 property that we perceive to be valuable and if we agree

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2 A I don't recall.

3 Q Have you discussed the need for these appli-
4 cations with anybody?

5 A I don't recall at this point.

6 Q To your knowledge, Mr. Adler, does Universal
7 presently license any goods using the "King Kong" trade-
8 mark which can be identified as computer programs and
9 amusement apparatus adapted for use with television
10 receivers, electronic amusement apparatus?

11 A Yes.

12 Q And what goods are those?

13 A Coleco, Tiger.

14 Q What goods of Coleco?

15 A I believe the electronic device, game.

16 Q What game?

17 A That's it. That's the only thing I recall at
18 this point.

19 Q Do you know what the Coleco game looks like?

20 A I'm sure I have seen it. I don't recall at
21 this point.

22 Q Do you know what the Coleco game is called?

23 A I believe it is a "Donkey Kong" type of game.

24 Q And what goods of Tiger do you believe fit
25 this description?

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2 A They would have a table top type of game,
3 small hand-held game type of watch and I believe also a
4 video cassette type of game.

5 Q Is this trademark application which is Exhibit
6 21 made with respect to the use of the "King Kong" trade-
7 mark in connection with the Coleco and Tiger products?

8 A I don't recall.

9 Q To your knowledge, does Universal currently
10 license the trademark "King Kong" in connection with
11 goods that can be identified toys--namely electronic
12 apparatus sold as a unit for playing video type games?

13 A I believe I've heard some discussion in that
14 direction. I don't recall offhand.

15 Q Do you recall any such goods using the
16 "King Kong" trademark?

17 A Discussions I have heard precisely, I don't
18 recollect.

19 Q What discussion have you heard?

20 A Vaguely I don't recall.

21 Q Do you recall the substance of the discussion?

22 A Only to the effect that there was going to be
23 or something in the works related to "King Kong" and
24 some kind of video game apparatus, some kind of computer
25 apparatus.

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proposals, some of them we turn into licenses, some not.

Q What discussions are you referring to now?

A A possible digital watch product.

Q Now, can you tell me what efforts, if any, you have made or anybody in the MCA group has made in attempting to license trademark rights in "King Kong"?

A We have a license with Ben Cooper for Halloween costumes. We have a license with Tiger Electronics for the items that we just discussed.

We have an agreement with Coleco and from time to time we have discussions about licensing other products.

Q Who has these discussions?

A People call up, they want a license for a particular item in addition to these that have been consummated.

Q Who are these people?

A Again, I don't recall. We get many, many calls, we have many discussions. As I say, some come to fruition, some don't. It is very difficult to recall precisely.

Q Do I understand correctly that merchandising has entered into licensing agreements for the use of "King Kong" with licensees other than Ben Cooper, Tiger

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2 Electronics and Coleco?

3 A I believe I've said that we had proposals and
4 discussions with several other people.

5 Q Have any licenses been entered into with
6 any other than Ben Cooper, Tiger Electronics and Coleco?

7 A No, I believe those are the licenses that have
8 been consummated.

9 Q With respect to the Ben Cooper license, how
10 did that license come about? Did you approach Ben Cooper?

11 A No, I believe they approached us.

12 Q With respect to Tiger Electronics, did they
13 approach you seeking a license of "King Kong"?

14 A I think so. I don't recall precisely.

15 Q Has anybody at Merchandising or Universal
16 been given a specific assignment of merchandising "King
17 Kong"?

18 A Not that I am aware of.

19 Q Have you personally ever approached any
20 potential licensees with respect to "King Kong"?

21 A I can't recall at this point.

22 Q To your knowledge has anybody else within
23 Merchandising approached any potential licensees with
24 respect to "King Kong"?

25 A I don't recall at this point.

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Q To your knowledge has anybody within the MCA corporate family approached potential licensees with respect to "King Kong"?

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A I don't think I could give you a responsible answer to that.

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Q Well, to your knowledge?

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A Offhand I'm not aware of any. Could be but not that I know of.

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Q Well, if such negotiations were going on with a potential licensee for "King Kong," would you be aware of such negotiations?

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A Perhaps. I couldn't tell you that with certainty. I just don't know.

15

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Q Do you believe you would be aware of such negotiations?

17

A I don't know.

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Q Are you aware of any instances where such negotiations were conducted totally without your knowledge?

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A I wouldn't know if it was without my knowledge.

21

Q Well, if it came to fruition in a license?

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MR. FAIRHURST: You mean of the four licenses to which he's testified? Those are the only four-- three, excuse me.

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Q Well, let's say in general with respect to

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2 any license of--

3 A Unless it was negotiated in a different area,
4 negotiated in publishing or the record business.

5 Q Anything within the purview of Merchandising
6 Corporation of America, are you aware of any instance
7 where licensing negotiations have taken place and you
8 have not been aware of those licensing activities until
9 the license came to fruition?

10 MR. FAIRHURST: He's only testified to three.

11 MR. GALLATIN: I'm asking in general.

12 MR. FAIRHURST: The question is meaningless.

13 I object to the form of the question because what
14 you are doing is quarreling with the witness.

15 MR. GALLATIN: I'm not limiting this to "King
16 Kong."

17 MR. FAIRHURST: That's the point. Then you
18 have a different question. I'm sorry, I understood
19 your question to be directed to "King Kong." If
20 that's not the import of your question, you should
21 clarify it.

22 MR. GALLATIN: Let's read back the question so
23 it is clear in Mr. Adler's mind and he can answer it.

24 (Question was read.)

25 A None that I can recall at this time.

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2 Q And are you aware of any such negotiations
3 that fell through and which you were not aware of until
4 the negotiations fell through?

5 A Not that I can recall at this time.

6 Q Have you been given any instructions from
7 anyone with respect to the merchandising or licensing of
8 "King Kong"?

9 A I don't understand what you mean. What type
10 of instructions do you have in mind?

11 Q Instructions as to how to go about marketing
12 "King Kong," what licensees to approach?

13 A Not that I can recall.

14 Q Have you instructed anybody in your organiza-
15 tion as to how to go about merchandising "King Kong"?

16 A Nothing that I can recall at this time.

17 Q Have you discussed any merchandising plans
18 for "King Kong" with anybody at Univresal or Merchandis-
19 ing?

20 A Not that I can recall at this time.

21 Q Are there present--

22 MR. FAIRHURST: Let me ask him something.

23 MR. GALLATIN: You can consult with the
24 witness, Mr. Fairhurst.

25 (Discussion off the record.)

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2 BY MR. GALLATIN:

3 Q Mr. Adler, after your discussion with Mr.
4 Fairhurst do you want to amend any of your answers?5 MR. FAIRHURST: I think you have to put a
6 question to him.7 Q Are you aware--did you have any discussions
8 with respect to "King Kong" with anybody at Universal or
9 Merchandising?10 A When we licensed Tiger I spoke to Loretta
11 Sifuentes about it. We discussed the license and negoti-
12 ations.13 Q Can you tell me a little more about the dis-
14 cussions in this case?15 A Just the fact when she was discussing the
16 licensing negotiations with Tiger Electronics she told me
17 on an ongoing basis what she was doing.18 Q Was that the only discussion with respect to
19 "King Kong" that you can recall at this time?20 A Well, I'm sure when we did the license with--
21 when the license was drafted and letters were sent back
22 and forth on the Ben Cooper license we had a discussion--
23 we haven't really discussed as a normal course of business
24 the license arrangement before it was signed and sent out
25 as we did with the Tiger Electronics.

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Q Did any of these discussions--strike that.

Have you told me now all of the discussions that you can recall as to "King Kong" with anybody at Universal and Merchandising?

MR. FAIRHURST: Other than the Legal Department you're talking about?

Q Other than attorney/client communications you may have had with Mr. Kroft which I believe is the only one.

MR. FAIRHURST: Wait. I think that is a little unfair.

MR. GALLATIN: And with you.

MR. FAIRHURST: And MCA's Legal Department. He testified to that before.

MR. GALLATIN: Fair enough.

A Miss Sifuentes is an attorney and I spoke to her as an attorney.

Q Miss Sifuentes was acting as an attorney when she was employed at Merchandising?

A Yes.

Q Am I correct that her employment relationship has been terminated?

A Yes.

Q By whom was that relationship terminated?

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2 A Well, I don't think that it has any direct
3 relationship with the case at hand.

4 MR. FAIRHURST: You can answer the question.
5 You can tell him who terminated her, that's right.

6 Who was she employed by?

7 THE WITNESS: By me.

8 A She was terminated for cause.

9 Q By you?

10 A Yes.

11 MR. GALLATIN: Off the record.

12 (Discussion off the record.)

13 Q Was Miss Sifuentes' termination for cause
14 related to the Tiger negotiations?

15 A No.

16 Can I ask my attorney a question?

17 (Discussion off the record.)

18 Q Mr. Adler, do you wish to amend any of your
19 previous answers after your consultation with counsel?

20 MR. FAIRHURST: That's a meaningless question
21 the form to which I object. I don't know how to
22 answer it. No, it is meaningless. You will not
23 answer such a question. How can you possibly
24 answer a question like that without knowing specifi-
25 cally what question you have in mind?

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2 MR. GALLATIN: The last time we had such a
3 consultation apparently Mr. Adler did wish to
4 amend his answer and I'm asking if he wishes to
5 amend his answers now.

6 MR. FAIRHURST: Which question would you like
7 him to amend his answer to?

8 MR. GALLATIN: Do you refuse to let the
9 witness answer the question?

10 MR. FAIRHURST: Yes.

11 BY MR. GALLATIN:

12 Q Do you refuse to answer the question based
13 on your counsel's eminent representation?

14 A Yes.

15 Q To your knowledge, have all of your answers
16 been full complete and truthful thus far?

17 A To my knowledge.

18 Q Now, Mr. Adler, other than the licenses of
19 "King Kong" to Ben Cooper, Inc, Tiger Electronic Toys,
20 Inc. and Coleco which you previously identified, are you
21 aware of any other licenses for the use of "King Kong"
22 presently in effect?

23 A Not at this time, no.

24 Q Would you be aware if there were any such
25 licenses presently in effect?

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2 A I suppose I would.

3 Q Do you know whether any licenses of "King Kong"
4 by RKO General Inc. are presently in effect?

5 A I don't know the answer to that.

6 Q You're not aware of any such licenses?

7 A No, sir.

8 MR. FAIRHURST: He didn't say that. He said
9 he is not aware.

10 Q You're not aware of any such licenses?

11 A I'm not aware.

12 MR. FAIRHURST: You mean he has any such
13 knowledge. Awareness and knowledge are not
14 synonymous terms.

15 A I have no knowledge of that at this point.

16 Q Now that we have drawn the distinction, are
17 you aware of any such licenses?

18 A I said I have no knowledge of any such
19 licenses.

20 Q And I take it then you are not aware of any
21 such licenses?

22 A Yes, I'm not aware.

23 Q Are you aware of any licenses of "King Kong"
24 by any other alleged predecessors in interest to Universal
25 of the rights to the name, character and story of "King

1
2 Kong"?

3 A Can I have that again, please?

4 (Record was read.)

5 A No, I am not aware at this time.

6 Q Do you have any knowledge of any such licenses?

7 A Not at this time I do not.

8 MR. FAIRHURST: Awareness is a term that
9 only a lawyer would use as opposed to know. The
10 English word is know.

11 MR. GALLATIN: Thank you, Mr. Fairhurst.

12 MR. FAIRHURST: You're welcome. I'm always
13 obliged to educate if I can.

14 BY MR. GALLATIN:

15 Q Do you know approximately how many licenses
16 with respect to "King Kong" were in effect in 1977?

17 A No, I don't at this point.

18 Q Do you know whether there were more licenses
19 in effect in 1977 of "King Kong" than there are today?

20 A I don't know the answer to the first question.
21 I couldn't give you a comparison.

22 Q How about with respect to 1976?

23 A I don't have any knowledge of that. I'm not
24 aware of any at that point at this time.

25 Q You're not aware of any licenses in effect in

1
2 1976?

3 A Not at this point, no.

4 Q How about with respect to 1975?

5 A Not at this point, no.

6 MR. FAIRHURST: You're addressing yourself to
7 RKO licenses, is that correct?

8 MR. GALLATIN: Any licenses.

9 MR. FAIRHURST: To say "any licenses," that's
10 meaningless, that's all there could be. Otherwise
11 the question is totally meaningless.

12 Q Are you aware of any licenses?

13 A Not for the dates you gave me, no.

14 MR. FAIRHURST: So the record is not ambiguous
15 on this let me make a statement.

16 Universal does not claim in this case, Mr.
17 Gallatin, to have had rights in "King Kong" of the
18 sort that we are asserting in this lawsuit until
19 subsequent to 1975 or '6 when the deals were done
20 with RKO and that's fully identified in the inter-
21 rogatory answers. I don't know that this witness
22 would be privy to that but I am.

23 MR. GALLATIN: Once again I thank you for your
24 advice. I would point out to you that this witness
25 has testified that in his view Universal had a right

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2 to the name, character and story of "King Kong" in
3 early to mid--in the early part to mid-'70's.

4 MR. FAIRHURST: The witness early to mid-'70's
5 the documents speak for themselves. They have been
6 identified in interrogatories as '76 or something.
7 They can be read by anyone and that's what we have
8 identified in the lawsuit, the basis on which
9 Universal's claim rested in this case.

10 MR. GALLATIN: We find it very interesting
11 that your witness has testified differently from
12 your interrogatories.

13 MR. FAIRHURST: The witness didn't testify
14 differently. The witness is being asked questions
15 about his area, not with respect to where the
16 rights came from, which is the Legal Department,
17 and I think he testified to that. If you want to
18 take unfair advantage of a witness, it's your affair.

19 MR. GALLATIN: As you said, Mr. Fairhurst,
20 the record will speak for itself.

21 BY MR. GALLATIN:

22 Q Has anyone acting on behalf of Universal or
23 Merchandising contacted any prior licensees of "King Kong"
24 to seek a renewal of licenses which may have lapsed?

25 A I don't recall at this time.

1
2 Q Have you ever contacted any prior licensees
3 of "King Kong" in order to renew licenses that have
4 lapsed?

5 A Not that I can recall at this time.

6 Q Do you know whether any licensees of "King
7 Kong" have ever cancelled their licenses?

8 A No, I don't.

9 Q Are you aware of any instances where a
10 licensee of "King Kong" has simply refused to honor their
11 licensing agreement?

12 A No, I'm not aware of that at this point.

13 (Discussion off the record.)

14 Q Do you wish to amend that answer?

15 A No, sir.

16 MR. GALLATIN: Off the record.

17 (Discussion off the record.)

18 (Luncheon recess taken at 12:15 p.m.)
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2 this covered by a previous request for documents?
3 Because if it was, I then tell you we don't have
4 any. If it wasn't, I can't tell you that because
5 I'd have to look specifically for that.

6 MR. GALLATIN: I don't know if we have asked
7 for the internal documents relating to "Donkey
8 "Kong" but if it was you can tell me they don't
9 exist, that's fine.

10 Q Mr. Adler, were you involved in the licensing
11 of King Kong to Tiger Electronics Toys, Inc.?

12 A Yes.

13 Q And what was your involvement?

14 A Had brief negotiations with Tiger Electronics,
15 Loretta Sifuentes was involved in the negotiations as well.
16 That's basically it. A couple of phone calls.

17 Q Who initiated the negotiations?

18 A I believe Tiger did.

19 Q And whom did Tiger contact?

20 A They might have contacted me and I might have
21 asked Loretta to handle the negotiation. Best recollec-
22 tion.

23 Q Did there come a time when a dispute arose
24 between you and Tiger?

25 A Well, we were concerned that we had not seen

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2 any of the prototype material before it was released to
3 the Press that there was in fact a game, something that
4 was offered for sale. At that point in time we sent
5 out some telexes, we had some phone calls with them and
6 expressed our anxiety over this.

7 Q With whom at Tiger did you communicate your
8 anxiety?

9 A I personally spoke to Randy Rissman.

10 Q Were you also concerned about the fact that
11 the Tiger game was very similar to "Donkey Kong"?

12 A Yes.

13 Q Why were you concerned over that similarity?

14 A We did not want to become involved in an
15 area that infringed in another area.

16 Q Was the dispute with Tiger resolved?

17 A Yes.

18 Q And how was it resolved?

19 A They brought us the material to look at and
20 approve, they showed us the packaging, I believe they
21 showed us some, whatever they sent out, some material to
22 enhance the various sales that we had licensed to them
23 and we put in our quality control approval and we saw the
24 way the game played and we were satisfied that it fit
25 our requirements.

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2 Q Were changes made in the game before you
3 approved it?

4 A I believe so.

5 Q Did you insist upon those changes?

6 A I believe so.

7 Q What was the nature of the changes?

8 A Again, I don't recall at the present time.

9 Q I have two documents identified as Defendants'
10 Exhibit 11 for identification and Defendants' Exhibit 12
11 for identification. These exhibits were marked during
12 Mr. Hadl's deposition. And I show you these--well, these
13 exhibits are letters from a Mr. Henry Kaplan of the
14 law firm Dressler Goldsmith Shore Sutker & Milnamow, Ltd.
15 to Mr. Robert Hadl.

16 I show you these two letters, Mr. Adler.

17 Have you ever seen these letters, Mr. Adler?

18 A I vaguely recall seeing them.

19 Q Would you take a moment and review them?

20 A Okay.

21 Q Have you finished reviewing these letters?

22 A Yes.

23 Q To your knowledge, did anybody explain to
24 Tiger in response to these letters specifically what
25 rights Universal claims to have in "King Kong"?

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A I know we had an advance payment of 15,000 and several thousand dollars since the advance was paid.

Q Do you have any memoranda or documents in your file that relate to the Tiger deal?

A I believe that had already been submitted.

MR. GALLATIN: Off the record.

(Discussion off the record.)

MR. GALLATIN: Mr. Fairhurst will make a representation on the record with respect to documents of Tiger.

MR. FAIRHURST: When the defendant put to Universal its interrogatories we requested production of documents the Universal Legal Department was asked to assist and they did so and to our knowledge we have produced all of the documents that were responsive to that request.

Q Mr. Adler, did you have anything to do with the agreement recently entered into by Universal and Coleco Industries with respect to "Donkey Kong"?

A Primarily Mr. Hadl. I was aware he was dealing with them, I did not.

Q Do you know whether anybody other than Mr. Hadl was involved in those negotiations?

A He's the only one I'm aware of from MCA.

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2 Q Do you know who approached whom with respect
3 to the Coleco agreement in the first instance?

4 A Not really.

5 Q Has anybody discussed this agreement with you?

6 A No.

7 Q What do you understand to be the terms of the
8 agreement with Coleco Industries?

9 A I just from basic recollection, something
10 that we were getting a small percentage of royalty for
11 the license that was negotiated by Mr. Hadl with whoever
12 it was he negotiated with at Coleco.

13 Q Is there a reason why Mr. Hadl negotiated
14 this license and other people at Merchandising did not?

15 A I assume it is because the litigation.

16 Q Does Mr. Hadl negotiate all licenses where
17 there is a specter of litigation?

18 A I can't answer that. I don't know. .

19 Q Would you expect him to be involved in any
20 such negotiations where litigation might be involved?

21 A Don't know.

22 Q Was he involved at the Tiger negotiations
23 because potential litigation was involved?

24 A I believe so.

25 Q Was he involved in the Cooper negotiations?

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2 name, of a series or of a motion picture or yardage of
3 anything that's related to our property every step of the
4 way.

5 Q And what are your particular responsibilities
6 in supervising this use of the licensees?

7 A I attempt to oversee this.

8 Q And does Miss Rush also oversee this super-
9 vision?

10 A Yes.

11 Q How about Miss Melhorn, does she also do
12 this?

13 A Yes.

14 Q What does Universal or Merchandising do about
15 unauthorized uses of its trademarks or copyrights?

16 A Try to stop them.

17 Q Is there any formal program or procedure at
18 Universal or Merchandising engages in to identified
19 unauthorized uses?

20 A Yes, there is no established procedure. Very
21 often we'll get something in the form of a sample of
22 an infringed item that might come from a licensee or
23 one of our reps or somebody that knows us, knows that we
24 have an interest in the property, we'll look at it, try
25 to find out who the person or persons are that are

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Adler

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A I couldn't give you a direct answer on that.

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MR. GALLATIN: Off the record.

4

(Discussion off the record.)

5

(Recess taken.)

6

BY MR. GALLATIN:

7

Q Mr. Adler, I just have one additional question

8

for you.

9

Has anyone acting on behalf of Universal

10

contacted prior licensees of "King Kong" whose licenses

11

have expired to seek a renewal of those licenses?

12

A I think you asked me that question.

13

Q Would you be kind enough to answer it again?

14

A I said to the best of my recollection, no.

15

MR. GALLATIN: We have no further questions,

16

1 Mr. Fairhurst.

17

Your witness.

18

MR. FAIRHURST: I don't have any questions.

19

(Time noted: 2:55 p.m.)

20

STEVE ADLER

21

Subscribed and sworn to

22

before me this _____ day

23

of _____ 1982.

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